

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ANDREW SASSER

PETITIONER

V.

Civil No. 00-CV-4036

LARRY NORRIS, Director of
Arkansas Department of Corrections

RESPONDENT

ORDER

Currently before the Court is Respondent's Motion for Leave to Conduct Discovery seeking an order that Petitioner provide disclosures as obligated under Fed.R.Civ.P 26(a)(2), Disclosure of Expert Testimony, and require Petitioner to provide the disclosures at specific times (shorter than those set by the rule). (Doc. 66.) Petitioner filed a Response, stating that he does not object to an order directing the parties to make disclosures contemplated by Fed.R.Civ.P. 26(a)(2), but objects to Respondent's proposed timing of the disclosures. (Doc. 68.)

There are times in which prehearing discovery is essential, this is one of those times. The Advisory Committee Notes to Rule 6 of the Rules Governing Section 2254 Cases in the United States District Court approve the use of discovery in appropriate cases before an evidentiary hearing has been granted. This is a case where the record must be expanded due to no state record existing on the issue and the lack of non-futile state remedies available to allow Petitioner to bring his newly created constitutional claim. Discovery at this point will allow facts to be presented to the Court

to assist with the question of whether an evidentiary hearing is warranted. Furthermore, discovery should be liberally granted in capital cases. *McFarland v. Scott*, 512 U.S. 849, 860 (1994) (O'Connor, J., concurring in the judgment in part); *accord id.* at 855 (majority opinion). Upon due consideration, Respondent's motion is GRANTED in part and DENIED in part.

The parties are hereby ordered to comply with Fed.R.Civ.P. 26(a)(2) and provide the required disclosures. The parties will abide by the timing set forth in Fed.R.Civ.P. 26(a)(2)(C). Once a party has disclosed information regarding an expert witness, the other party will be granted leave to conduct necessary discovery.

IT IS SO ORDERED this 25th day of August 2006.

/s/ Harry F. Barnes
HARRY F. BARNES
United States District Judge